



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Submission of An Acknowledgment of Receipt of a Notice of Pendency of Class Action.

MEETING DATE: Wednesday June 5, 1996

PREPARED BY: Kirk J. Evans, Assistant to the City Manager

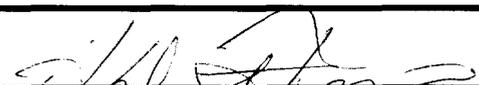
RECOMMENDED ACTION: That City Council approve submission of an ACKNOWLEDGMENT OF RECEIPT of a NOTICE OF PENDENCY OF CLASS ACTION to the law firms of Lister, Guckenberger, & Martin and McDermott, Will & Emery.

BACKGROUND INFORMATION: A class action was filed March 21, 1996 in Los Angeles Superior Court entitled "City of Torrence, et al vs. State Compensation Insurance Fund". The firms representing the plaintiff entities have also requested the City of Lodi's participation in this action. The City of Lodi has participated in a similar action against the State Compensation Insurance Fund in the past and recovered \$39,502.02. Each member of the proposed class is being asked to contribute \$500, on a voluntary basis, to a "cost fund" to cover out-of-pocket costs of litigation e.g. filing fees, depositions, travel expenses, expert fees, etc. Staff recommends that the City of Lodi return the ACKNOWLEDGMENT OF RECEIPT, participate in this action, and contribute \$500 to the "cost fund".

FUNDING: Will use current budgeted funds


Kirk J. Evans
Assistant to the City Manager

APPROVED: _____


H. Dixon Flynn -- City Manager

*McDermott Insurance
Professional Corporation*
2049 Century Park East
Los Angeles, CA 90067-3208
310-277-4110
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MCDERMOTT, WILL & EMERY

NOTICE OF PENDENCY OF CLASS ACTION
(Rule 15.13, Los Angeles Superior Court)

To the presiding officer of the County, City, School District or other Public Entity to which this Notice is Directed:

YOU ARE HEREBY NOTIFIED that a class action was filed on March 21, 1996 in the Los Angeles Superior Court, entitled "City of Torrance, et al. v. State Compensation Insurance Fund," Case No. BC 146645 (the "Action"). You are being notified of this Action because your public entity may be a member of the proposed class. Please forward this notice promptly to the senior person responsible for administering your workers' compensation program.

If approved by the Court, the Action will proceed on behalf of a "class" of plaintiffs which includes all California counties, cities, school districts and other special districts who, in years past, have purchased workers' compensation insurance from the State Compensation Insurance Fund ("SCIF") and are now permissibly self-insured. The complaint alleges five separate causes of action all arising from SCIF's failure to reimburse class members for workers' compensation benefits paid over many years to injured employees on occupational disease or cumulative injury claims. Such reimbursement may be required under final orders issued by the Workers' Compensation Appeals Board (as authorized by Labor Code § 5500.5), which apportion responsibility for these payments between individual members of the class and SCIF. If liability is shown, actual damages to class members will include any and all reimbursement due from SCIF on payments already made to injured employees by class members, plus accrued interest through today. Files which may support actual damages could date back as many as thirty years. The complaint also seeks punitive damages for SCIF's alleged "bad faith" in dealing with its former insureds (for example, by ignoring repeated demands for reimbursement over long periods of time), as well as attorneys' fees and costs of suit. SCIF is a publicly-chartered workers' compensation insurance carrier which is subject to civil liability just as any private carrier would be. SCIF is expected to deny responsibility and vigorously contest plaintiffs' right to any recovery.

Counsel for the named plaintiffs, who will seek Court approval to represent the entire class, have represented a class of California counties and cities in a previous action against SCIF which resulted in a recovery, after trial, of \$18 million. In this previous action, individual class members recovered all their actual damages in amounts ranging to over \$700,000. As in the previous action, plaintiffs' counsel will make every effort to

establish liability before class members are required to review individual case files to present proof of their damages.

This is not a form for submitting individual damage claims or for requesting exclusion from the proposed class. Forms for damage claims or exclusion, along with thorough instructions for completing them, may be sent to you at a future date after further proceedings in the Action have occurred.

Plaintiffs' counsel have been retained by the several named plaintiffs to prosecute the Action on a "contingency" basis. If there is no recovery, counsel will receive no fee for their services. However, the litigation could be very expensive. The named plaintiffs feel it is appropriate to spread this burden equally among members of the proposed class -- all of whom stand to be benefitted by the joint effort. Each member of the proposed class is therefore asked to contribute \$500, on a voluntary basis, to a "cost fund" which will be established to cover only the out-of-pocket costs of litigation (for example, filing fees, depositions, travel expenses, experts fees, photocopying and postage). No attorneys' fees will be paid from this fund. The cost fund will be maintained as a segregated fiduciary account for which a complete accounting will be provided at the conclusion of the litigation. Class members contributing to this fund will receive reimbursement of their \$500 prior to the distribution of damages following any settlement or judgment in the Action.

To evidence your receipt of this Notice, please sign the attached "ACKNOWLEDGMENT OF RECEIPT" and return it immediately in the pre-addressed envelope enclosed. Also, please enclose your \$500 check, payable to the "City of Torrance v. SCIF Cost Fund."

Finally, immediately following the attached Acknowledgement of Receipt is a short "PRELIMINARY QUESTIONNAIRE." By completing and returning this Questionnaire, you will make it unnecessary to contact you again for the information requested. Also, receipt of this information will enable plaintiffs' counsel and the Court to determine at the outset the approximate size of the proposed class on whose behalf this Action may proceed.

Should you have any questions concerning the information or instructions set forth above, feel free to call plaintiffs' counsel between 9:00 a.m. and 5:00 p.m. weekdays at (800) 554-3755 (ask for Helen Brennan or Katie Calderon).

Dated: April 2, 1996.

McDERMOTT, WILL & EMERY
ROBERT P. MALLORY
PETER B. BRANSTEN, and

LISTER, GUCKENBERGER & MARTIN
DAVID E. LISTER

By: 
Robert P. Mallory
Attorneys for Plaintiffs

City of Torrance, et al. v. SCIF
(LASC Case No. BC 146645)

ACKNOWLEDGEMENT OF RECEIPT

I hereby acknowledge receipt of the two-page "NOTICE OF PENDING OF CLASS ACTION" in this matter, dated April 2, 1996.

Date: April __, 1996

(Name of public entity
returning this form)

By: _____
(Print name of person signing)

(Signature)

Its: _____
(Title of person signing)

(Telephone number)

PRELIMINARY QUESTIONNAIRE

1. Have you ever been insured by SCIF? Yes __. No __.
2. If you answered the last question "yes," for what years were you insured? _____
3. Are you still insured by SCIF? Yes __. No __.
4. At any time since 1966, have you become liable under the workers' compensation laws of California for payment of disability benefits, medical treatment, vocational rehabilitation or other workers' compensation benefits, because of cumulative injuries or occupational diseases suffered by employees or former employees? Yes __. No __.
5. If you answered the last question "yes," did any of these workers' compensation claims involve an award issued by the Workers' Compensation Appeals Board requiring some portion of this liability for compensation and benefits to be reimbursed by SCIF? Yes __. No __. I don't know without reviewing the case files _____.
6. If you answered the last question "yes," does any portion of SCIF's obligation to reimburse you remain unpaid? Yes __. No __. I don't know without reviewing the case files _____.
7. If you are now permissibly self-insured for workers' compensation liability, who administers your claims?

(Name of administrator, either in-house or third party)

(Address of administrator)

(Telephone number of administrator)